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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

Federal Communications Commission
Office of Secretary

MM Docket No. 87-268

To: The Commission

**DISPATCH BROADCAST GROUP'S PETITION FOR PARTIAL
RECONSIDERATION OF THE SIXTH REPORT & ORDER**

R. Clark Wadlow
Thomas P. Van Wazer

Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006
(202) 736-8000

Its Attorneys

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**DISPATCH BROADCAST GROUP'S PETITION FOR PARTIAL
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The Dispatch Broadcast Group ("Dispatch"), on behalf of stations WBNS-TV, Channel 10, Columbus, Ohio and WTHR-TV, Channel 13, Indianapolis, Indiana, hereby files this Petition for Partial Reconsideration of the Federal Communications Commission's Sixth Report and Order, FCC 97-115, released April 21, 1997 ("Sixth Report & Order"). Although Dispatch has joined in the Petition for Clarification and Partial Reconsideration of the Fifth and Sixth Reports and Orders filed by the Association for Maximum Service Telecasters and Other Broadcasters (hereinafter the Broadcasters Caucus), it has filed this separate Petition to highlight a flaw in the model used by the Commission to assign power levels for new DTV assignments.¹ Dispatch also reserves the right to supplement this Partial Petition following a review

¹ Dispatch noted this flaw in its timely-filed Comments submitted in response to the Commission's Sixth Further Notice of Proposed Rule Making ("Sixth NPRM").

of OET Bulletin 69 and its impact on Dispatch's NTSC and DTV operations.

Dispatch applauds the Commission for moving forward with the assignment of a DTV channel to every eligible broadcaster. Dispatch believes that Commission does need to act now to ensure that the American public will continue to receive the highest quality, free, over-the-air television service into the twenty-first century. Dispatch also strongly supports the Commission's decision to replicate each station's existing NTSC service area in the new DTV allotment table. See, e.g., Sixth Report & Order ¶ 29. However, although the Commission has endorsed the concept of NTSC service area replication in its new table of DTV allotments, the method utilized by the Commission's DTV model to calculate the existing NTSC service areas of high-band VHF stations like WBNS-TV and WTHR-TV does not accurately reflect their actual service areas. Because of this flaw, the Commission has assigned DTV power levels that will not replicate the actual NTSC service areas of high-band VHF stations like WBNS and WTHR.

Specifically, because the Commission's planning factors use a 56 dBu Grade B contour to define the NTSC coverage area for high-band VHF stations, the model understates the actual NTSC coverage areas of high-band VHF stations which significantly exceed the 56 dBu contour. Unless this problem is corrected, the FCC's DTV allotment model will disenfranchise current viewers of

high-band VHF stations like WBNS-TV who, despite being outside of the 56 dBu Grade B contour predicted for WBNS-TV by the Commission's rules or by the Longley-Rice model, clearly receive its signal over-the-air.

Exhibit 1 hereto shows WBNS-TV's predicted NTSC 56 dBu Grade B contour under the Commission's rules and the Longley-Rice propagation model. Exhibit 2 hereto documents WBNS-TV's recorded over-the-air viewing in over twenty counties that lie either in whole or in part beyond the 56 dBu Grade B contour predicted for WBNS-TV by the Commission's rules or by the Longley-Rice model (or both).² Dispatch submits that these exhibits vividly illustrate a flaw in the Commission's planning factors: WBNS-TV has over-the-air viewers in these outlying counties -- viewers who will be disenfranchised unless the Commission acts to correct this flaw in the DTV model that generated its allotment table.³

² There are a number of important issues to be considered in the implementation of the Longley-Rice model for individual stations that could explain this discrepancy. These issues include the confidence factor used in the studies, the size of individual cells studied and whether these cell sizes are appropriate for terrain conditions, the manner of selecting the centroids for population calculations and whether the values and methodology is appropriate for the range of propagation paths that are found throughout the areas where allotment calculations are required. Without access to OET Bulletin No. 69, Dispatch is unable to assess whether any of these factors affected WBNS's predicted coverage.

³ Such a result is contrary to decisions by the Commission and the Courts that recognize that a loss of service area is not in the public interest. See, e.g., Hall v. FCC, 237 F.2d 567 572 (D.C. Cir. 1956); New Jersey Public Broadcasting Authority, 74 F.C.C.2d 602, 605 (1979); KTVO, Inc., 57 Rad. Reg. 2d (P & F) 648, 650 (1984).

In addition, if uncorrected, this flaw in the Commission's planning factors also threatens to create an artificial power and service disparity between low-band and high-band VHF stations that currently does not exist based on the actual NTSC service areas of stations in these channel ranges. This result occurs, in significant part, because low-band VHF stations are given credit for larger NTSC service areas because the Commission's planning factors use a 47 dBu Grade B contour to define their NTSC service areas. Whatever historical justification existed for this discrepancy in the definition of the Grade B contour for low-band and high-band VHF stations, as detailed in Exhibit 2 hereto, this difference is not justified today based on the actual NTSC service areas of low-band and high-band VHF stations.

A comparison of the DTV channel and power assignments of the three VHF stations serving the Columbus, Ohio DMA with their actual off-the-air NTSC viewing illustrates this unwarranted DTV power and service area differential. WBNS-TV, operating on NTSC channel 10, was assigned DTV channel 11 with a maximum ERP of 14 kW; WCMH-TV, operating on NTSC channel 4, was assigned DTV VHF channel 14 with a maximum power of 1,000 kW; WSYX-TV, operating on NTSC channel 6 was assigned DTV channel 13 with a maximum ERP of 39.0 kW. This substantial disparity in the assigned DTV power levels (especially the disparity between WSYX on VHF channel 13 and WBNS on VHF channel 11) is not justified by

the actual NTSC service areas of these stations in and around Columbus.

Exhibit 2 documents the most recent Nielsen non-cable viewing results for WCMH, WBNS and WSYX in virtually all the counties that lie beyond the NTSC 56 dBu Grade B contour predicted for WBNS-TV by the Commission's rules or by the Longley-Rice model (or both).⁴ As illustrated in Exhibit 2, WBNS-TV draws as many or more over-the-air viewers than its two low-band VHF competitors in each of the outlying counties despite the fact that neither the Commission's rule nor the Longley-Rice model predicts any coverage for the station. Clearly, there is no discernable difference between the actual NTSC service areas of WCMH, WSYX and WBNS based on these off-air viewing results.⁵ However, because the Commission's DTV planning factors rely on a historical anomaly regarding the defined NTSC service areas between these stations, the Commission's DTV table creates an unjustified and unwarranted power and service area differential between these similarly-situated VHF stations.

⁴ Dispatch submitted similar over-the-air audience viewing results in counties beyond its Grade B contour in its Comments submitted in response to the Sixth NPRM in this proceeding.

⁵ The over-the-air viewing results depicted in Exhibit 2 are representative of the audience figures for the three stations over the past several years. The existence of cable television service in these outlying counties does not alleviate this problem. The flaw in the Commission's DTV allotment will essentially deprive viewers who do not subscribe to cable, and thus exclusively rely on free over-the-air service, of the many hours of news, children's and public affairs programming broadcast by high-band VHF stations like WBNS-TV.

Because this result clearly contradicts the Commission's NTSC service area replication goal and, at the same time, artificially threatens to distort the existing competitive balance between similarly-situated VHF stations, Dispatch urges the Commission to correct its DTV model by changing its planning factors to credit high-band VHF stations with their actual NTSC service areas before assigning a DTV power level to achieve NTSC service area replication. While the Commission understandably adopted implementation criteria for the entire county in creating its DTV model, Dispatch strongly urges the Commission to adjust its model to more accurately reflect the actual NTSC service areas of high-band VHF stations like WBNS-TV.⁶

Dispatch is committed to providing the highest quality, free, over-the-air television service well into the twenty-first century. However, unless the Commission acts to correct this flaw in its DTV model to reflect more accurately the actual service area of high-band VHF stations like WBNS and WTHR, it will disenfranchise current NTSC over-the-air viewers throughout the country and artificially distort the competitive position

⁶ One short-hand solution to this problem would be to credit high-band VHF stations like WBNS with a Grade B contour closer to the 47 dBu contour used for low-band VHF stations. The Commission's UHF Comparability Task Force recognized that a 56 dBu Grade B contour for high-band VHF stations was no longer appropriate given technological improvements over a thirty year period. Comparability for UHF Television, UHF Comparability Task Force, Office of Plans and Policy, Appendix B & Table B-2 (September 1980). The over-the air viewing evidence in the Columbus DMA cited above strongly supports a redefined Grade B contour for high-band VHF stations like WBNS.

between stations -- results directly contrary to the Commission's stated objectives in awarding DTV channels and contrary to the overall public interest.

Respectfully submitted,
DISPATCH BROADCAST GROUP

By: Thomas P. Van Wazer
R. Clark Wadlow
Thomas P. Van Wazer

Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006
(202) 736-8000

Its Attorneys

Dated: June 13, 1997



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Viewership by County

This table represents share of average quarter-hour viewing from Monday through Sunday 7am to 1 am by homes in each listed county.

| County | # TV HH | WBNS | | | | | | WCMH | | | | | | WSYX | | | | | |
|-----------|---------|-------|-----|-------|-----|-----------|-----|-------|-----|-------|-----|-----------|-----|-------|-----|-------|-----|-----------|-----|
| | | Total | | Cable | | Non Cable | | Total | | Cable | | Non Cable | | Total | | Cable | | Non Cable | |
| | | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR |
| Allen | 38,190 | 279 | 2 | 241 | 2 | 38 | 2 | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Ashland | 18,070 | 68 | 1 | 62 | 2 | 6 | - | 92 | 1 | 25 | 1 | 7 | - | 20 | - | 19 | 1 | 1 | - |
| Athens | 20,150 | 641 | 10 | 587 | 12 | 55 | 4 | 519 | 8 | 482 | 10 | 37 | 3 | 435 | 7 | 410 | 8 | 25 | 2 |
| Auglaize | 16,870 | 103 | 2 | 97 | 2 | 5 | - | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Clinton | 14,120 | 43 | 1 | 34 | 1 | 9 | - | 22 | - | 22 | 1 | - | 0 | 66 | 1 | 59 | 2 | 7 | - |
| Coshocton | 13,400 | 629 | 14 | 444 | 15 | 185 | 13 | 729 | 17 | 387 | 11 | 392 | 28 | 346 | 8 | 234 | 8 | 112 | 8 |
| Crawford | 18,070 | 740 | 12 | 649 | 12 | 91 | 9 | 640 | 10 | 572 | 11 | 68 | 7 | 364 | 6 | 317 | 6 | 47 | 5 |
| Gallia | 11,930 | 58 | 1 | 55 | 3 | 3 | - | NA | NA | NA | NA | NA | NA | 34 | 1 | 34 | 2 | 0 | - |
| Guernsey | 13,000 | 421 | 8 | 346 | 8 | 75 | 5 | 302 | 5 | 298 | 7 | 4 | 0 | 256 | 5 | 202 | 5 | 54 | 4 |
| Hancock | 23,400 | 104 | 1 | 103 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| Hardin | 11,110 | 561 | 13 | 410 | 21 | 151 | 9 | 63 | 2 | 27 | 1 | 36 | 2 | 111 | 3 | 77 | 4 | 34 | 2 |
| Highland | 14,170 | 194 | 5 | 80 | 3 | 114 | 7 | 90 | 2 | 37 | 1 | 53 | 3 | 136 | 3 | 44 | 2 | 92 | 5 |
| Holmes | 9,110 | 121 | 4 | 121 | 8 | 0 | 0 | 3 | - | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| Jackson | 11,820 | 160 | 4 | 138 | 7 | 22 | 1 | 162 | 4 | 143 | 7 | 20 | 1 | 180 | 4 | 139 | 7 | 11 | 1 |

HOW TO READ:

TOTAL COLUMN In Allen County, WBNS had an average quarter hour audience Monday through Sunday, 7am - 1am of 279 TV households. This represents a 2% share of the total viewing by all TV households in this county to any station during the average quarter hour.

CABLE COLUMN In Allen County, WBNS had an average quarter hour in the same daypart of 241 cable homes. This represents a 2% share of the total cable viewing by all cable households in this county.

NON-CABLE COLUMN In Allen County, WBNS had an average quarter hour in the same daypart of 38 non-cable homes. This represents a 2% share of the total non-cable households in this county.

Viewership by County

This table represents share of average quarter-hour viewing from Monday through Sunday 7am to 1 am by homes in each listed county.

| County | # TV HH | WBNS | | | | | | WCMH | | | | | | WSYX | | | | | |
|------------|---------|-------|-----|-------|-----|-----------|-----|-------|-----|-------|-----|-----------|-----|-------|-----|-------|-----|-----------|-----|
| | | Total | | Cable | | Non Cable | | Total | | Cable | | Non Cable | | Total | | Cable | | Non Cable | |
| | | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR | HH | SHR |
| Logan | 16,750 | 504 | 9 | 307 | 8 | 197 | 11 | 173 | 3 | 13 | 0 | 159 | 9 | 381 | 7 | 272 | 7 | 109 | 6 |
| Meigs | 8,960 | 111 | 3 | 103 | 5 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21 | 1 | 21 | 1 | 0 | - |
| Mercer | 13,860 | 41 | 1 | 0 | 0 | 41 | 2 | 13 | 0 | 8 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| Miami | 35,850 | 92 | 1 | 81 | 1 | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| Meigs | 8,960 | 111 | 3 | 103 | 5 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21 | 1 | 21 | 1 | 0 | - |
| Mercer | 13,860 | 41 | 1 | 0 | 0 | 41 | 2 | 13 | 0 | 8 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| Morgan | 5,220 | 183 | 9 | < | < | < | < | 79 | 4 | < | < | < | < | 32 | 2 | < | < | < | < |
| Muskingum | 31,560 | 1383 | 12 | 1098 | 12 | 290 | 12 | 724 | 7 | 401 | 5 | 323 | 14 | 969 | 9 | 722 | 8 | 247 | 11 |
| Noble | 4,030 | 34 | 3 | 32 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 33 | 3 | 31 | 9 | 2 | - |
| Pike | 9,630 | 833 | 22 | 749 | 31 | 87 | 6 | 381 | 10 | 313 | 13 | 68 | 5 | 338 | 9 | 289 | 10 | 99 | 7 |
| Richland | 43,040 | 1308 | 8 | 859 | 7 | 449 | 14 | 499 | 3 | 416 | 3 | 83 | 3 | 294 | 2 | 291 | 2 | 63 | 2 |
| Scioto | 30,740 | 566 | 5 | 560 | 6 | 6 | 0 | 59 | 1 | 49 | 1 | 10 | 0 | 286 | 3 | 234 | 3 | 52 | 2 |
| Shelby | 16,580 | 43 | 1 | 32 | 1 | 12 | 1 | 42 | 1 | 42 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| Van Wert | 11,160 | 6 | - | 0 | - | 6 | 1 | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Washington | 24,260 | 803 | 7 | 483 | 8 | 19 | 1 | NA | NA | NA | NA | NA | NA | 262 | 3 | 260 | 5 | 2 | - |
| Wayne | 36,840 | 16 | - | 12 | - | 4 | - | NA | NA | NA | NA | NA | NA | 5 | - | 0 | - | 5 | - |
| Wyandot | 8,230 | 205 | 9 | 187 | 13 | 18 | 2 | 13 | 1 | 13 | 1 | 0 | - | 36 | 2 | 36 | 3 | 0 | - |



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